

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

December 8, 2006

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 97HD-572

Hawaii

Amend Prior Board Action of April 12, 2001, Agenda Item D-23, Issuance of Revocable Permits to S & S Dairy and Sydney Andrade; Waiohinu, Ka'u, Hawaii, Tax Map Key:3<sup>rd</sup>/9-5-05: portion of 03.

BACKGROUND:

At its meeting of April 12, 2001, under agenda item D-23 (Exhibit A), the Land Board approved the Issuance of Revocable Permits for pasture purposes to S & S Dairy, Daleico Ranch, Felix Ibarra and Sydney Andrade; Waiohinu, Ka'u, Hawaii, Tax Map Key:3<sup>rd</sup>/9-5-05: portion of 03.

Due to delays in obtaining appraisals for all the applicants, the permits were only recently completed. In the interim, S & S Dairy ceased operations. The owners of the dairy, Richard and Donna Souza wish to continue utilizing the land for pasture purposes under the new business name, Richard E. Souza and Donna Lee Souza, dba R & D Farm.

In addition, Sydney Andrade who was applying for an intensive agricultural permit is no longer interested in his portion of the property and would like to withdraw his request. The other applicants Daleico Ranch and Felix Ibarra have already had their permits issued and are utilizing the portions of the State land they were assigned.

Staff is therefore recommending that the Board amend a portion of its prior action of April 12, 2001, by canceling the request from S & S Dairy and issue a month-to-month permit for pasture purposes to Richard E. Souza and Donna Lee Souza, dba R & D Farm. Staff is also recommending the Board rescind the permit request from Sydney Andrade for agricultural purposes.


RECOMMENDATION: That the Board:

1. Amend its prior board action taken at its meetings of April 12, 2001, Agenda Item D-23 by changing the name, S & S Dairy to Richard E. Souza and Donna Lee Souza, dba R & D Farm and rescinding the request from Sydney Andrade for intensive agricultural use;

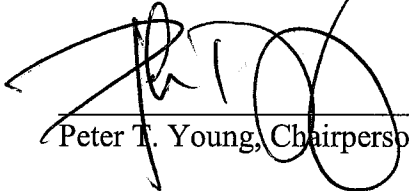
2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



 Gordon C. Heit  
Land Agent

APPROVED FOR SUBMITTAL:

  
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Peter T. Young, Chairperson

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

April 12, 2001

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

HAWAII

Issuance of Revocable Permits to:

1. Felix Ibarra, Waiohinu, Ka'u, Hawaii, TMK: (3) 9-5-005: por 003
2. S & S Dairy Inc., Waiohinu, Ka'u, Hawaii, TMK: (3) 9-5-005: por 003
3. Daleico Ranch, Waiohinu, Ka'u, Hawaii, TMK: (3) 9-5-005: por 003 & Kaunamano, Ka'u, Hawaii, TMK: (3) 9-5-013 por 001
4. Sydney Andrade, Waiohinu, Ka'u, Hawaii, TMK (3) 9-5-005: por 003

APPLICANT:

1. Felix Ibarra, married, tenant in severalty, whose business and mailing address is P.O. Box 214, Naalehu, Hawaii 96772
2. S & S Dairy, Inc., a Hawaii corporation, whose business and mailing address is P.O. Box 30, Naalehu, Hawaii 96772
3. Daleico dba Daleico Ranch, a Hawaii partnership, whose business and mailing address is P.O. Box 418, Kailua-Kona, Hawaii 96745-0418
4. Sydney Andrade, married, tenant in severalty, whose business and mailing address is P.O. Box 325, Naalehu, Hawaii 96772

LEGAL REFERENCE:

Sections 171-13 and 171-55, Hawaii Revised Statutes, as amended

LOCATION:

For Applicants 1, 2, 3, & 4:

Portion of Government lands of Waiohinu situated at Waiohinu, Ka'u, Hawaii, identified by Tax Map Key: (3) 9-5-005: por 003 as shown on the attached map labelled Exhibit A, and

For Applicant 3:

Portion of Government lands of Kaunamano, situated at Kaunamano Homesteads, Ka'u, Hawaii, identified by Tax Map Key: (3) 9-5-013: por 001 as shown on the attached map labelled Exhibit B

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON

ITEM D-23

04/12/2001

	1. F. Ibarra	2. S & S Dairy	3. Daleico	3. Daleico	4. S. Andrade
Tax Map Key #	(3) 9-5-005: por 003	(3) 9-5-005: por 003	(3) 9-5-005: por 003	(3) 9-5-013: por 001	(3) 9-5-005: por 003
Area	140.00 acres	47.69 acres	Waiohinu 96.00 acres	Kaunamano 45.00 acres	1.50 acres
State Land Use District	Agriculture	Agriculture	Agriculture	Agriculture	Agriculture
County of Hawaii CZO	Ag-20A	Ag-20A	Ag-20A	Ag-20A	Ag-20A
Land Title Status: Section	5(b)	5(b)	5(b)	5(b)	5(b)
DHHL 30% Entitlement?	Yes	Yes	Yes	Yes	Yes
Current Use Status	Unencumbered	Unencumbered	Unencumbered	Unencumbered	Unencumbered
Character of Use	Pasture	Pasture	Pasture	Pasture	Intensive Agriculture

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson; Permittees to be charged back rent to January 2000

MONTHLY RENTAL:

To be determined by staff appraiser, subject to review and approval by the Chairperson

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental

LIQUIDATED DAMAGES:

Twenty percent (20%) of the monthly rental per day or three dollars (\$3.00) per day, whichever is greater

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The proposed use does not differ from the past use of the subject area. Therefore, pursuant to Section 11-200-8(a)(1), Exempt Classes of Action of the Environmental Impact Statement Rules of the Hawaii Administrative Rules, the action is exempt from the preparation of an environmental assessment. This section exempts "operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical

AT HIS MEETING IN DO  
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features, involving negligible or no expansion or change of use beyond that previously existing".

DCCA VERIFICATION:

	1. F. Ibarra	2. S & S Dairy, Inc.	3. Daleico	4. S. Andrade
Place of business registration confirmed:	N/A; Sole Proprietor	Yes	Yes	N/A; Sole Proprietor
Registered business name confirmed:	N/A; Sole Proprietor	Yes	Yes	N/A; Sole Proprietor
Applicant in good standing confirmed:	N/A; Sole Proprietor	Yes	Yes	N/A; Sole Proprietor

REMARKS:

Summary of the History of the Parcels:

TMK: (3) 9-5-005: 003

General Lease No. 4262 executed for lease sold by auction, held on 09/29/69, to Hutchinson Sugar Company, Limited. Term of lease commenced on 09/29/69 and ended 09/28/94. 11-12-69

Month-to-Month Revocable Permit No. S-6974 issued to Ka'u Agribusiness Company, Inc. Effective date of permit was 09/29/94 and permit was cancelled 12/31/99. 04-04-97

TMK: (3) 9-5-013: 001

General Lease No. 3511 executed for lease sold by auction, held on 12/10/54, to Hutchinson Sugar Company, Limited. Term of lease commenced on 01/01/55 and ended 12/31/69. 08-06-59

Month-to-Month Revocable Permit No. S-4737 issued to to Hutchinson Sugar Co., LTD. (subsequently Ka'u Sugar Company, Inc., then Ka'u Agribusiness Company, Inc.). Effective date of permit was 01/01/70 and permit was cancelled 12/31/99. 08/29/72

The three pasture permit applicants are presently ranching on the lands that they are requesting. These plots were, until January 2000, portions of large blocks of sugar and pasture acreages made up of State and private lands controlled by Ka'u Agribusiness (Ka'u Ag). The applicants were allowed use, of the subject areas as these plots are contiguous to or surrounding parcels the parties leased and still lease from Ka'u Ag's landholdings. Ranch operations, including paddock and watering systems, are generally consistent with logical land use and the lay-of-the-

land and do not necessarily adhere to or have recognizable parcel boundaries.

Prior to termination of their permits in 1999, Ka'u Ag proposed that the State issue revocable permits to Ibarra, S & S Dairy, and Daleico Ranch to minimize the cost required for surveying boundaries and possible repositioning of fencelines. Staff has been working with these three ranchers on their applications and feels that their continued use of the land is favorable at this time. Applicants will be required to pay back rent to January 2000.

The intensive agriculture permit applicant, Mr. Sydney Andrade, is also currently farming on a small portion of TMK: (3) 9-5-005: 003 and had been allowed that use during the time Ka'u Ag held the permit on the parcel. Staff also feels that his continued use would be a beneficial tenancy. He will also be required to pay back rent to January 2000.

It should be noted that at the ending of their sugar operations, Ka'u Ag had requested permission to administer some of its permit area to third parties. They were not allowed to sublease pursuant to the conditions of their revocable permit. Ka'u Ag allowed the subject applicants to use the parcel for pasture and vegetable crop production (not the designated character of use of sugar cane cultivation), without charge, but for land maintenance purposes, while it held on to the permit for future agricultural endeavors. When these proposed uses did not prove feasible, Ka'u Ag requested cancellation of its permit.

Although staff does not condone Ka'u Ag's action of allowing use that did not conform to its revocable permit's character of use, the ensuing land maintenance is of value to the State. Without continued cultivation/pasture use, the cost of controlling/eradicating noxious species that proliferate on vacant lands would have to be borne by the State or its future tenants.

In addition, staff takes responsibility for the length of time between the termination of Ka'u Ag's permit and this submittal to request dispositions to the four applicants. This time lag created a scenario where the applicants could potentially appear to be unauthorized users of State lands and subject to fines. This is clearly not the case in this situation. The applicants have been waiting for a disposition to validate tenancy and will be paying any back rent to January 2000.

Furthermore, staff is not recommending any fine for the use of lands previously under the Kau Agribusiness revocable permit since there was no exchange of monies and, therefore, may not be considered a subleasing arrangement.

At this time, the four subject applicants are each requesting a month-to-month revocable permit encumbering the respective subject parcels for pasture or intensive agriculture purposes.

The proposed pasture use and intensive agriculture use are allowable in the county zoning, which is Agriculture 20A.

The applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

All four applicants pursuant to section 171-14.5, HRS, pre-qualification criteria for pasture lease auction bidders (used as a benchmark to qualify pasture permittees), meet the standards

required for a bona fide individual farmer or a nonindividual farm concern.

At this time, there are no file records of other applicants requesting these parcel portions. The parcels had been under revocable permits to Ka'u Agribusiness, Inc.: TMK: (3) 5-005: 003 from 1994 to 1999 and TMK: (3) 5-5-013: 001 from 1970 to 1999.

The following table summarizes results of the solicitation of comments on the subject requests for month-to-month revocable permits:

AGENCY/PARTY	DATE OF RESPONSE	SUMMARY OF COMMENTS RECEIVED
County of Hawaii		
1. Planning	01/18/01 & 03/12/01	We have no comments or objections.
2. Public Works	01/12/01 & 03/05/01	We have no comments or objections.
3. Water Board of the County of Hawaii	01/19/01 for (3) 9-5-005: por 003	Water is available from an 8" waterline in the Hawaii Belt Road which runs along the southern side of this parcel. Portion that may be leased is approx. 450' from the waterline. Parcel 3 currently has a 5/8' meter. Water availability conditions, which are subject to change, would allow for a second meter. Water Board asks that water demand calculations be submitted for review & approval and determination of water needs, costs and requirements.
4. Fire Department	01/22/01 & 03/06/01	We have no comments or objections.
AGENCY/PARTY	DATE OF RESPONSE	SUMMARY OF COMMENTS RECEIVED
5. Police Department	01/17/01 & 03/14/01	We have no comments or objections.
6. Civil Defense Agency	01/17/01	We have no objections, if there is adequate feed and water for the cattle.
State of Hawaii		
7. DOT Highways Division	01/17/01 & 03/13/01	We have no comments or objections.
8. Department of Health	01/11/01 & 03/06/01	We have no comments or objections.
9. Department of Hawaiian Home Lands	01/18/01 & 03/05/01	We have no comments or objections.
10. Office of Hawaiian Affairs	none 01/21/01	"
State of Hawaii DLNR		

11. Aquatic Resources	01/16/01 & 03/05/01	We have no comments or objections.
12. DOCARE	01/23/01 & 03/02/01	We have no comments or objections.
13. DOFAW	01/10/01 & 03/08/01	We have no comments or objections.
14. Na Ala Hele	none	
AGENCY/PARTY	DATE OF RESPONSE	SUMMARY OF COMMENTS RECEIVED
15. Historic Preservation	02/06/01 & 03/06/01	We have no comments or objections.
16. Engineering Branch	02/01/01 for (3) 9-5-005: por 003	We do not have any objections on the request. FYI, the subject site, according to FEMA Community Panel #1551661675C and #1551661852C, is located in Zone X – an area determined to be outside of 500-year flood plain.
17. Land Division, Planning	none 3/16/01	Pass of RP area about conservation areas
18. Parks	01/16/01 & 03/09/01	We have no comments or objections.
19. Ka'u Agribusiness, Inc.	none	

TMK: (3) 9-5-005: 003 is currently designated 7 units of 600 gallons per day of County potable water for its 378.0 acres. If the parcel boundaries remain as is and the water cap is adhered to, this would work out to eleven (11) gallons/acre/day. For the area's climate, irrigated field crops would require a range of approximately 3000 – 7000 gallons/acre/day and orchard crops 3500 – 9500 gallons/acre/day. Using one animal unit per seven (7) acres, pasture use (non-irrigated) would require approximately 1.7 gallons/acre/day. Although this is a very simplistic way to look at availability and only addresses County supplies, it illustrates the current problem of an inadequate reliable water source to provide for a higher land use for this parcel at this time.

Presently only Mr. Andrade uses County water designated for this parcel on his requested area. The three pasture applicants obtain water for their herds from sources servicing the parcels they lease from Ka'u Ag.

Staff recommends a month-to-month tenancy for these parcel portions for pasture purposes and the small area of intensive agriculture use as appropriate interim usage until the Division is prepared to put the lands up for long-term leases. Survey, mapping, possible subdivision, and resolution of water and access issues need to be completed before considering these parcels for long-term dispositions.

Staff recommends that, due to the potential for both drought and flood conditions in the Ka'u District, the Permittees be required to work with the Ka'u Soil and Water Conservation District to formulate conservation plans for the subject parcels.

Perimeter fencing constructed of stock proof materials will be required to delineate the

boundaries of the Premises, confine Permittee's livestock, and protect the Premises.

There are no existing dwellings on the Premises and staff recommends that no residential use be allowed.

Staff further recommends that no hunting be allowed on the premises and that the cost of any utilities, if desired, be the responsibility of the Permittee.

RECOMMENDATION: That the Board:

1. Find that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, the disposition will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

2. Authorize the issuance of revocable permits to:

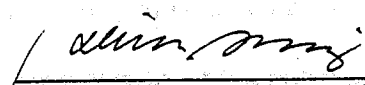
Felix Ibarra, covering the respective subject area for pasture purposes,  
S & S Dairy, Inc., covering the respective subject area for pasture purposes,  
Daleico dba Daleico Ranch, covering the respective subject area for pasture  
purposes, and  
Sydney Andrade, covering the respective subject area for intensive agriculture  
purposes,

under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
- b. The Permittee be required to carry out a program of conservation in cooperation with the appropriate Soil and Water Conservation District, with which district the Permittee shall maintain cooperative status. The conservation program shall be in accordance with a conservation plan that shall be submitted to the Chairperson for acceptance, fifteen (15) days after approval by the appropriate Soil and Water Conservation District. The conservation plan shall include, but not be limited to, applicable practices of land clearing, range/pasture management, irrigation and drainage systems, noxious weed control, and others needed to protect the land against deterioration and prevent environmental degradation; provided, however, that this requirement may be waived for the permit with little or no apparent conservation problems as verified by the appropriate Soil and Water Conservation District. In the event the activities of the Permittee in this regard shall be found to be unsatisfactory to the Chairperson, the Chairperson shall notify the Permittee and the Permittee shall be required, within thirty (30) days of the notice, to cure the fault and submit proof satisfactory to the Chairperson;

- c. Permittee is required to erect and maintain perimeter fencing of stock proof materials;
- d. The Permittee is prohibited from using the Premises for residential or employee dwelling purposes;
- e. There will be no hunting permitted on the Premises;
- f. The cost of utilities, if desired, shall be the responsibility of the Permittee;
- g. Review and approval by the Department of the Attorney General; and
- h. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

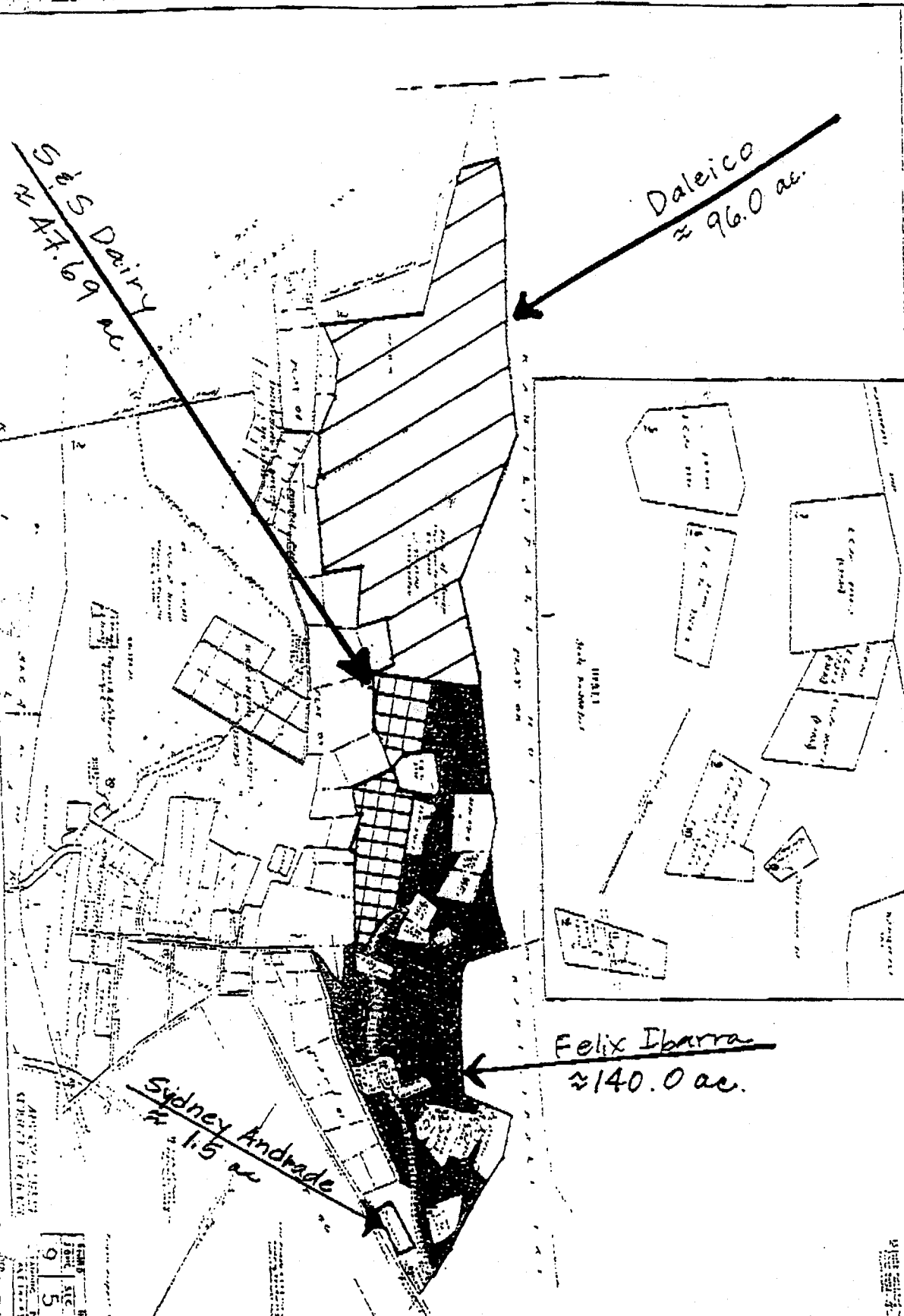
  
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Trudy L. Hanohano  
Land Agent

APPROVED FOR SUBMITTAL:

  
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GILBERT S. COLOMA-AGARAN, Chairperson

Issuance of Revocable Permits  
 Felix Ibarra, S & S Dairy, Inc.,  
 Daleico Ranch, Sydney Andrade  
 Waiohinu & Kaunamano, Ka'u, Hawaii  
 TMK (3) 9-5-005: por 003

# EXHIBIT A



REDUCED/NOT TO  
 SCALE

9	5	0	5
1	5	0	5
1	5	0	5
1	5	0	5

